

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Norman Krieger Inc.
Licensee of WQCC468
San Diego, California

)
)
)
)
)
)

FRN: 0010-6274-87

Released: September 28, 2005

³47 U.S.C. § 503(b).

However, the authorized frequency for station WQCC468 is 22461.25 MHz. The agent also inspected the microwave radio station. The Krieger staff provided the agent of copy of the station authorization, WQCC468, the following day. The station authorization indicated that the authorized frequency for station WQCC468 is 22461.25 MHz.

4. On March 11, 2005, the San Diego Office sent a Letter of Inquiry ("LOI") to Krieger concerning its unauthorized operation on 21377.74 MHz, in violation of Section 1.903(a) of the Commission's Rules.⁴ On March 24, 2005, an agent of the Commission's San Diego Office returned to the Krieger office and found that station WQCC468 was operating on its authorized frequency of 22461.25 MHz. The San Diego Office received a reply to the LOI on April 1, 2005. The reply stated that this radio station was used for Krieger's internal business communications between their U.S and Mexican facilities. Krieger stated that the receiver and transmitter frequencies of the microwave radio station had been installed backwards and that the improper operation on 21375.0 MHz began in November of 2003.⁵ Krieger also indicated that the receiver and transmitter frequencies had been corrected.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. On December 1, 2004, and February 25, 2005, San Diego agents determined that Krieger was operating microwave radio station WQCC468 on the unauthorized frequency of 21375.0 MHz. Further, Krieger admits that its microwave radio station had been operating on 21375.0 MHz ever since it was first installed in 2003.

7. Krieger was aware of the licensed frequency for WQCC468 but failed to operate on it. Therefore, its violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Krieger apparently willfully and repeatedly violated Section

⁴21377.74 MHz is within the maximum allowable tolerance of microwave channel 21375.0 MHz. See 47 C.F.R. § 101.147(s).

⁵According to Commission's records, however, the reciprocal frequency for the WQCC468 license is 21229.25 MHz.

⁶Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

1.903(a) of the Rules by operating a microwave radio station on an unauthorized frequency of 21375.0 MHz.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ We note that in its reply to the LOI, Krieger acknowledges that it was operating on the wrong frequency and that it has since corrected the problem. The Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁰ Additionally, a licensee is required to operate on the frequency stated in its authorization.¹¹ Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, we conclude that Krieger is apparently liable for a forfeiture in the amount of \$4,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Norman Krieger Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 1.903(a) of the Rules.¹²

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Norman Krieger Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California 92111, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

⁸12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁹47 U.S.C. § 503(b)(2)(D).

¹⁰*AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

¹¹*Dominic DeNaples*, 19 FCC Rcd 12303 (EB 2004).

¹²47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a).

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Norman Krieger Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.
District Director
San Diego Office
Western Region
Enforcement Bureau

¹³See 47 C.F.R. § 1.1914.